

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 13 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0027-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
MARIA ALANIZ,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200100981

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Law Offices of Matthew H. Green  
By Matthew H. Green

Tucson  
Attorney for Petitioner

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Maria Alaniz seeks review of the trial court’s order denying her petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Alaniz has not sustained her burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Alaniz was convicted of soliciting the transportation of a narcotic drug for sale. The trial court suspended the imposition of sentence and placed her on probation for a period of three years. Alaniz, who was a lawful permanent resident, subsequently was detained at a border port of entry after returning from a trip to Mexico and was “placed . . . into removal (“deportation”) proceedings.”

¶3 In October 2011, Alaniz initiated a post-conviction proceeding, arguing in her petition that her Sixth Amendment right had been violated because her counsel had not advised her of the immigration consequences of her guilty plea as required by *Padilla v. Kentucky*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473 (2010). She maintained that counsel had been ineffective in failing to advise her properly and that although her claim was untimely, it could be raised pursuant to Rule 32.1(f) and (g) because “[her] failure to file a Rule 32 petition was due to no fault of her own, but to the fact that a new development in the law occurred.” And she further contended she had “been denied due process” because the trial court had failed to properly advise her pursuant to Rule 17.2(f), Ariz. R. Crim. P. Noting that this court “has decided that *Padilla* . . . does not apply retroactively,” see *State v. Poblete*, 227 Ariz. 537, ¶ 16, 260 P.3d 1102, 1107 (App. 2001), the trial court summarily denied relief.

¶4 On review, Alaniz asserts our decision in *Poblete* “was founded on a flawed analysis” and maintains the trial court erred in failing to address her separate argument that the court had not advised her pursuant to Rule 17.2(f) when it accepted her guilty plea. We find her claims without merit for several reasons. First, Alaniz’s notice

of post-conviction relief is untimely, and she therefore is entitled to relief only on certain grounds. Ariz. R. Crim. P. 32.4(a). In her petition for post-conviction relief, Alaniz cites Rule 32.1(f) and (g) as the grounds for relief. But, as we explained in *Poblete*, relief under Rule 32.1(f) is appropriate “if the trial court failed to advise the defendant of his right to seek of-right post-conviction relief or if the defendant intended to seek post-conviction relief in an of-right proceeding and had believed mistakenly his counsel had filed a timely notice or request.” 227 Ariz. 537, ¶ 6, 260 P.3d at 1104, *citing* Ariz. R. Crim. P. 32.1(f) 2007 cmt. Like *Poblete*, Alaniz makes no such claim here.

¶5 As to Alaniz’s claim under Rule 32.1(g), that *Padilla* constituted a significant change in the law that entitled her to relief, we agree with the trial court that she failed to state a colorable claim for relief. We have determined *Padilla* is not applicable retroactively, *Poblete*, 227 Ariz. 537, ¶ 16, 260 P.3d at 1107, and we decline Alaniz’s invitation to reconsider that conclusion.<sup>1</sup>

¶6 Alaniz’s Rule 17.2(f) argument likewise lacks merit. That rule is “[a]pplicable to all criminal cases in which a[n] . . . admission of guilt . . . occurs on or after December 1, 2004.” Ariz. R. Crim. P. 17.2 app. Apart from her reliance on *Padilla*, which did not decide whether the trial court has a duty to advise a defendant of potential immigration consequences of a plea, Alaniz has cited no authority to show that her claim based on Rule 17.2(f) falls under any of the exceptions to the rule of preclusion with respect to untimely post-conviction proceedings, nor has she established that Rule 17.2(f)

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<sup>1</sup>Our supreme court denied review of this court’s decision in *Poblete* on February 15, 2012.

applies retroactively. Therefore, although we grant the petition for review, we deny relief.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge